

JULY 31, 2020

AD HOC JURY TASK FORCE REPORT



RESUMING TRIALS AMID COVID-19

RECOMMENDATIONS
FOR BEST PRACTICES

INTRODUCTION

On March 18, 2020, the Kansas Supreme Court issued Administrative Order 2020-PR-016, directing courts to cease all but emergency operations, including jury trials, to protect the health and safety of court users and court staff against the highly infectious Coronavirus disease (COVID-19). The gravity of the COVID-19 crisis still looms today. At this time, there are no specific vaccines or treatments for COVID-19.

Recognizing that COVID-19 spreads primarily through droplets of saliva or discharge from the nose when an infected person coughs or sneezes, jury trials pose particularly difficult challenges. Most trials involve a large number of people and occur in enclosed spaces over the period of a few days or more. On June 2, 2020, the Kansas Supreme Court created the Ad Hoc Jury Task Force to support district courts in planning to resume the operation of jury trials. The Court directed the Task Force to make recommendations for best practices regarding ways to conduct jury trials and grand jury proceedings while protecting the safety of court participants. The Court further directed the Task Force to examine issues and explore possible solutions for the jury summons process, including adequate jury pools and communicating with the public about changes in the jury process. The Court designated the following Task Force Members.

- Honorable Amy Hanley, Task Force Chair, District Court Judge, 7th Judicial District
- Honorable Steven Ebberts, District Court Judge, 3rd Judicial District
- Honorable Lori Bolton Fleming, District Court Judge, 11th Judicial District
- Honorable Laura Lewis, District Court Judge, 16th Judicial District
- Honorable Chris Smith, District Court Judge, 19th Judicial District
- Katherine Stocks, Court Administrator, 10th Judicial District
- Janelle Morel, Chief Clerk, 17th Judicial District
- Kristi Hill, Clerk, 29th Judicial District
- Crystal Gossett, Clerk, 30th Judicial District
- Andrea Skucius, Secretary II, 20th Judicial District
- Mary Kay Howe, Court Reporter, 7th Judicial District
- Paul Brothers, Attorney, Topeka
- Terrence Campbell, Attorney, Lawrence
- Jeffrey Dazey, Attorney, Olathe
- James Howell, Attorney, Wichita
- Kate McKinney, Attorney, Overland Park
- Christopher McMullin, Attorney, Olathe
- Dionne Scherff, Attorney, Overland Park

The recommendations for best practices from the Task Force are listed in the following report. Each judicial district should adapt these recommendations to meet the needs and address the concerns of its own jurisdiction. Each district will be impacted by its location, demographics, and funding. The Task Force recognizes that each jurisdiction is uniquely positioned to address COVID-19 challenges and consider how to conduct a jury trial during this pandemic based on local conditions. There is no single approach, and not all recommendations will be necessary, practical, or feasible in all districts. Each district must choose the recommendations that will protect its jurors while also promoting justice.

EXECUTIVE SUMMARY

The challenges faced by the legal system due to COVID-19 can be opportunities to develop best practices for courts. Courts will be able to evaluate and assess current practices and procedures with potential to evolve practices for the future.

Throughout COVID-19 and our nation's public health emergency, Kansas courts have used this opportunity to move forward in innovation while continuing to serve their communities. Our next step will be prioritizing the health and safety of Kansas jurors and court participants as trials resume and jurors report for their civic duty. The recommendations laid out below balance the protection of jurors and justice.

Communicating with Jurors

The first step in resuming jury trials is communication with the public. Clear and consistent communication educates and builds confidence. Courts must communicate the message in various ways to reach jurors of all ages and backgrounds. The following recommendations will help courts explain the process, manage anxiety, and deliver the message.

- Courts should share plans to ensure the safety of jurors and court participants at the earliest opportunity by using local and social media.
- Court staff should distribute a video message communicating steps the court is taking to protect potential jurors. A **short video** available for use by all districts can be found on the Kansas Judicial Branch website [Ad Hoc Jury Task Force page](#).
- Court staff should include with the initial juror summons a letter noting any changes in the normal process and an insert communicating steps the court is taking to protect potential jurors. A **sample letter and customizable insert** are provided in the attachments section of this report.
- Judges should communicate changes in the process to jurors during jury orientation. The Task Force recommends addressing health and safety measures (including masks, hygiene, and physical distancing), constitutional, and procedural issues such as reminding jurors not to rush deliberations or draw adverse inferences from witnesses wearing masks.
- Court staff at each individual courthouse should ensure adequate signage is used.

Securing Adequate Jury Pools

When jury trials resume in Kansas courts, the process of summoning jurors for service will include new challenges. Courts will need to revise the qualification process to address high-risk groups while still securing adequate jury pools. Moreover, reporting jurors must be appropriately screened to avoid risking the health of the entire pool. Courts should implement the following practices to clear these additional hurdles.

- Judges should liberally grant juror requests to defer for later service, if appropriate reasons are given.
- Judges should ensure entire categories of the population are not excluded from the jury pool in order to ensure a fair cross-section of the community by handling requests for excusal or deferral on an individualized basis instead of creating blanket policies.
- Court staff should increase the number of juror summons to ensure adequate jury pools.
- Judges should consider increasing the number of alternate jurors for each trial.
- Judges should, with caution, and only upon stipulation of the parties, reduce the number of peremptory strikes.
- Judges should, only in civil cases and upon stipulation of the parties, consider conducting trials using smaller juries. The Task Force is also recommending that the Kansas Supreme Court consider adopting a new rule applicable to district courts regarding six-person juries in civil cases.
- Each judicial district should determine whether, upon entry to the building, jurors will be subject to temperature and other physical health screening, or whether jurors will self-monitor those conditions.
- Court staff should modify the language of jury questionnaires to include a supplemental screening portion related to health conditions, contact with COVID-19 positive individuals, and travel that may preclude jury service. Court staff should also add language from K.S.A. 43-159 with regard to juror excusal and an inquiry as to each juror's access to technology. A **sample questionnaire** that includes issues pertaining to COVID-19 is provided in the attachments section of this report.

Utilizing Pretrial Measures to Minimize Length of Juror Service

The use of pretrial measures will further aid in the safe and efficient return of jury trials. When used consistently and appropriately, pretrial measures may result in a decrease in length and number of overall trials. Courts should examine increased use of pretrial conferences, settlement conferences, and mediation, while giving substantial thought to the order in which trials are scheduled.

- Judges should increase the use of settlement conferences and mediations in criminal and civil cases.
- Judges should refine pretrial conferences and orders, and fully examine the possibility of stipulations with the parties to reduce time in trial and length of juror service.
- Judges should prioritize trial settings with emphasis on speedy trial issues and cases where defendants are in custody.

Conducting a Fair Trial While Protecting Juror and Court Participant Safety

Protecting juror health and safety will require a significant increase in preparation and planning. Courts must be flexible and ready to adapt as guidelines change on a daily basis. Health experts have consistently recommended the following measures that courts must address: hand washing, more cleaning and sanitizing, personal protective equipment, and adequate physical distancing.

- Court staff at each individual courthouse should create and implement heightened cleaning and sanitation protocols.
- Court staff at each individual courthouse should create and implement personal protective equipment protocols that comply with the most recent Kansas Supreme Court administrative orders and advice from local health officials. Masks must be worn by all persons in the courthouse and courthouse facilities, unless a judge orders an exception be made for a particular individual or specific courtroom.
- Judges should consider reading an admonition to jurors regarding masks.
- Court staff at each individual courthouse should create and implement infrastructure and protocols to support adequate physical distancing for all court participants including utilizing and/or reconfiguring all available space.
- Judges should develop protocols on physical distancing that will ensure a fair trial, including positioning of participants, attorney/client communication, and sidebars.
- Judges should develop a plan for health and safety issues that may arise during trial such as symptomatic jurors, court participants, or safety non-compliance by trial participants.
- Judges should develop and instruct jurors on guidelines for breaks and juror gathering during those breaks.
- Judges should ensure the public has access to the trial by utilizing a combination of the following means: seating in the courtroom, a live stream broadcast available to the public, and closed-circuit television transmitting to another area of the courthouse. The Task Force is also recommending that the Kansas Supreme Court consider amending Rule 1001 to clarify whether its provisions for juror anonymity and witness rights apply when the live stream broadcast is the only means of public access to the trial.
- Judges should create and implement protocols for handling exhibits, including requiring pre-marking and prohibiting passing exhibits between jurors.
- Judges should develop specific guidelines for the use of interpreters.

Conducting a Fair Trial – Virtually

While virtual proceedings work well for many types of hearings, the transition for jury trials is not as smooth. The right to trial by jury is the bedrock of the judicial system, amplified in a multitude of Constitutional and statutory provisions. Courts should examine the possible use of virtual proceedings for civil cases and grand juries while conducting criminal proceedings in-person, absent a clear waiver from the defendant.

- Judges should conduct criminal jury trials in-person due to Constitutional and statutory barriers, unless a defendant clearly waives the right to in-person proceedings. A **guide for best practices when conducting a virtual trial** is included in the attachments section of this report.
- Judges should conduct jury selection in-person.
 1. Each judicial district should survey and reserve spaces available for trials and specifically, jury selection.
 2. Judges should stage jurors to control and limit interaction in large numbers.
 3. Judges should conduct jury selection in small panels, preferably 12 or less.
- Judges should consider conducting civil jury trials virtually if procedural requirements are waived and technology is available.
- Judges should consider conducting grand jury proceedings virtually.
- Courts should apply for grant funds, including those offered by the Office of Judicial Administration (OJA), and evaluate the use of Coronavirus Aid, Relief, and Economic Security (CARES) Act funds to assist with technology for virtual court proceedings.
- Court staff and judges should collect and share data on trials or parts of trials conducted virtually.